

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 150, SERVICE AND HOSPITAL  
EMPLOYEES' INTERNATIONAL UNION,  
AFL-CIO

For a Referendum on the Question  
of an All-Union Agreement between

MADISON CONVALESCENT CENTER  
Madison, Wisconsin, Employer

and LOCAL 150, SERVICE AND HOSPITAL  
EMPLOYEES' INTERNATIONAL UNION,  
AFL-CIO, Union

Case IV  
No. 15636-R-5325  
Decision No. 11079-A

ORDER SETTING ASIDE RESULTS OF REFERENDUM

Pursuant to a stipulation for referendum executed by Local 150, Service and Hospital Employees' International Union, AFL-CIO, and Madison Convalescent Center, the Wisconsin Employment Relations Commission directed on July 18, 1972, conducted a referendum among all regular full-time and regular part-time employees excluding supervisors, confidential, managerial, professional and office employees, licensed practical nurses, registered nurses, and registered occupational therapists who were employed by the Employer on June 14, 1972.

The results of the referendum were as follows:

1. Total number eligible to vote.....	56
2. Total ballots cast .....	36
3. Total ballots challenged.....	2
4. Total valid ballots counted.....	34
5. Ballots cast for an "All-Union Agreement".....	30
6. Ballots cast against an "All-Union Agreement".....	4

Following the conduct of the referendum, Local 222 United Hospital and Nursing Home Employees Federation filed a telegram with the Commission timely objecting to the conduct of the referendum, stating that nothing that specific objections would follow, which subsequently specific objections were filed, wherein Local 222 United Hospital and Nursing Home Employees Federation contended under facts that the referendum executed by the parties specifically, the identity of the employees selected upon being eligible did not include full-time employees in the unit, that upon receipt of said specific objections, the Commission directed a letter to the employer requesting that one or more officers execute an affidavit with respect to the matter, that on August 25, 1972, the Commission received such affidavit from the

the direction of United Care Facilities, Inc., which corporation  
operates the above-named Employer; and the Commission having reviewed  
the results of the referendum, the objections, and the affidavit, and  
being satisfied that the results of the referendum do not raise any question  
as to whether a referendum be conducted among all the employees in the unit.

NOW, THEREFORE, it is

ORDERED

That the results of the referendum conducted by the Wisconsin  
Employment Relations Commission on July 18, 1972, in the instant  
matter be set aside and the same hereby is, set aside, and that a new  
referendum be conducted among all the employees in the bargaining unit  
as certified by the National Labor Relations Board, and in that regard

IT IS FURTHER ORDERED that the parties execute a new stipulation  
containing a list of all the eligible employees in the unit as certified  
by the National Labor Relations Board, who were employed on June 14,  
1972.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 1st  
day of September 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Morris Blawney*  
Morris Blawney, Chairman

*Ed S. Rice*  
Ed S. Rice, Commissioner

AC 100-11000

MEMORANDUM ACCOMPANYING  
ORDER SETTING ASIDE RESULTS OF REFERENDUM

As indicated in the preface to the Commission's Order, the Commission conducted a referendum among the employees in the bargaining unit previously described herein. The referendum was based upon a stipulation executed by the Employer and Local 150, Service and Hospital Employees International Union, AFL-CIO, hereinafter referred to as Local 150, which stipulation included a list of employees as agreed upon as being eligible. During the course of the conduct of the referendum, the stipulated eligibility list was adjusted. Of 56 employees eligible to vote, 36 cast ballots, 2 ballots were challenged and of the 34 remaining ballots, 30 employees voted in favor of the authorization of an all-union agreement between the parties while 4 voted against said authorization. If the results of the referendum were permitted to stand, the required number of employees authorized an all-union agreement between the Employer and Local 150, since under the statute a majority of the employees in the "unit" voted in favor of the authorization.

Following the conduct of the referendum, Local 222 United Hospital and Nursing Home Employees Federation, hereinafter referred to as Local 222, filed objections to the conduct of the referendum setting forth as follows:

"1) On May 2, 1972, a representation election was held at Madison Convalescent Center by the National Labor Relations Board for 'all regular full-time and regular part-time employees'. At that time the Employer claimed 83 eligible voters (See Case No. 30-RC-1692 NLRB Reg 13). However, the eligible voters for the union referendum conducted by your office at the same place of business the same employer in the same bargaining unit numbered only 54. There is no basis for the exclusion of some 30 employees in the certified bargaining unit from voting. If employees are eligible to vote in a representation election, then, they are eligible to vote in a referendum for an all-union agreement. Hence, Service Employees International Union Local 150, which is the collective bargaining representative for 83 eligible voters did not receive a majority vote of the employees it represents.

"2) Nothing in the operation of Madison Convalescent has changed since the representation election of May 2, 1972, that has resulted in a reduction in the work force by July 18, 1972, or would justify the exclusion of any employees in the bargaining unit certified by the NLRB."

Following the receipt of such specific objections, the Commission, by letter, directed the Employer to execute an affidavit with respect to the following:

"1. The number of employees eligible to participate in the National Labor Relations Board election.

"2. The number of employees who had quit their employment or were discharged for cause from the eligibility date established by the National Labor Relations Board and May 2, the date on which the National Labor Relations Board election was conducted."

statement as to what caused the reduction, if any, of eligible employees from the number eligible to participate in the National Labor Relations Board election as compared with the number of employes eligible to participate in the Commission's referendum."

1. On August 25, 1972, the Commission received the following affidavit from Alvin M. Resnick, the Executive Director of United Care Facilities, Inc., which operates the Employer involved. The material portions of the affidavit are as follows:

"ALVIN M. RESNICK, being first duly sworn, on oath deposes and says that:

1. He is Executive Director of United Care Facilities, Inc. which operates the Madison Convalescent Center as one of its nursing home facilities. This Affidavit is submitted in response to the request of the Wisconsin Employment Relations Commission dated August 15, 1972 with respect to said Madison Convalescent Center, Case IV, No. 15636, R-5325.

2. On May 2, 1972 the National Labor Relations Board conducted an election at the Madison Convalescent Center. There were 89 employees eligible to participate in said election as provided upon the eligibility list as of March 27, 1972, the eligibility date for the election.

3. Between March 27, 1972 and May 2, 1972, the date of the election, four employees voluntarily left the employment of Madison Convalescent Center.

4. The reduction of eligible employees from the number which participated in the NLRB election as compared with the number which participated in the WERC referendum is due to the fact that the parties have agreed for purposes of administration of the labor contract that the 'regular part-time' employees in the unit shall include only those employees working 20 hours or more per week. It was for this reason that only such employees were included in the referendum voting list, and accordingly only such over 20 hour employees will be required to become members of the union after completing their 60 day probationary period. Union membership will not be required for unit employees working less than 20 hours a week."

In the letter accompanying the affidavit, Counsel for the Employer questioned the standing of Local 222 to raise an objection with respect to said referendum.

There is presently pending before the Commission complaints of unfair labor practices, wherein the Employer and Local 450 are named as individual Respondents; and wherein said Respondents are charged with committing unfair labor practices in being parties to an all-union agreement without the employes involved authorizing such an all-union agreement in a referendum conducted by the Commission. Under such circumstances we deem that Local 222 is a proper party in raising the objections to the conduct of the referendum.

It should be noted that in their stipulation the Employer and Local 150 described the unit as certified by the National Labor Relations Board in the representation election conducted by it, and as a result in its Direction the Commission directed the referendum in said described unit. However, the parties in submitting the list of employees accompanying the stipulation, in effect, amended the description of the bargaining unit by not including all regular part-time employees in the unit, but rather considered only those employees working twenty (20) hours or more per week as regular part-time employees, thus, reducing the number of eligible employees. It has been well established that in a referendum proceeding the Commission will not change or alter the collective bargaining unit which has been previously established. 1/

By limiting the regular part-time employees to those working twenty (20) or more hours per week, the Employer and Local 150 have changed the bargaining unit previously certified by the National Labor Relations Board. The mere fact that the parties do not intend to require employees who work less than twenty (20) hours to become members of Local 150 does not alter the situation.

Therefore, we are setting aside the results of the referendum and have directed the Employer and Local 150 to execute a new stipulation and to attach thereto a list of all regular full-time and regular part-time employees employed in the unit as of June 14, 1972, 2/ regardless of the number of hours worked per week by the regular part-time employees. Upon receipt of the properly executed stipulation the Commission will direct a new referendum.

Dated at Madison, Wisconsin, this 1st day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

MORRIL STAVNEY, Chairman

ZEL S. NICE, II, Commissioner

✓ Memorial Hospital (8403) 2/68

2/ The eligibility date established by the Commission in its original Direction of Referendum.